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Attorney for Plaintiff
JONATHAN SAPAN

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JONATHAN SAPAN,

Plaintiff,

vs.

ADCHEMY, INC., a California
Professional Corporation,
MURTHY V. NUKALA, an individual,

Defendants.

Case No.: '14CV1112 JLS NLS

**COMPLAINT FOR DAMAGES,
INCLUDING PUNITIVE
DAMAGES, INTEREST AND
ATTORNEY'S FEES, AND
FOR INJUNCTIVE RELIEF**

**Violation(s) of Telephone
Consumer
Protection Act of 1991
Trespass to Chattel
Unfair Business Practices**

COMES NOW Plaintiff JONATHAN SAPAN (hereinafter referred to as
"Plaintiff") who alleges as follows:

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JURISDICTIONAL ALLEGATIONS

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2 1. Plaintiff is, and at all times herein mentioned was, a resident of the
3 County of San Diego, State of California
4

5 2. Defendant Adchemy, Inc. is, and at all times herein mentioned was, a
6 professional corporation, doing business in the County of San Diego, State of
7 California.
8

9 3. Defendant Murthy V. Nukala is, and at all times herein mentioned
10 was, an individual resident of County of San Mateo, State of California.
11

12 4. This case is filed pursuant to the Telephone Consumer Protection Act
13 of 1991, 47 U.S.C. §227 et. seq. The U.S. Supreme Court recently decided that
14 federal courts have federal question subject matter jurisdiction over such civil
15 actions under 28 U.S.C. §§ 1331 and 1441. *Mims v. Arrow Fin. Services, LLC*, --
16 U.S. --, 132 S.Ct. 740, 753 (2012). The state law claim herein arises out of a
17 common nucleus of operative facts and is subject to supplemental jurisdiction
18 pursuant to 28 U.S.C. § 1367.
19
20
21

22 5. At all times herein mentioned each defendant was the partner, agent
23 and employee of each co-defendant herein and was at all times acting within the
24 scope of such partnership, agency and employment and each defendant ratified the
25 conduct of each co-defendant herein.
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28

FACTUAL SUMMARY

6. JONATHAN SAPAN received calls to his home phone number from Defendants wherein they tried to pitch educational services on the following dates and times and using the following Caller ID (“CID”) numbers:

- October 6, 2011 at 9:16am, CID 877-506-6442
- October 6, 2011 at 3:19pm, CID 877-502-6442
- October 7, 2011 at 10:50am, CID 877-502-6442
- October 24, 2011 at 8:42am, CID 855-826-3553
- October 25, 2011 at 1:01pm, CID 855-826-3553
- October 25, 2011 at 1:01 pm, CID 855-826-3553
- October 26, 2011 at 8:42am, CID 855-826-3553
- October 26, 2011 at 12:47pm, CID 877-284-3871
- October 27, 2011 at 8:33am, CID 855-826-3553
- October 27, 2011 at 9:20am, CID 855-826-3553
- October 28, 2011 at 8:27am, CID 855-223-2332
- October 28, 2011 at 12:42p, CID 855-223-2334
- October 31, 2011 at 8:46am, CID 855-223-2330
- October 31, 2011 at 4:47pm, CID 855-223-2331
- November 1, 2011 at 4:03pm, CID 855-223-2334
- November 1, 2011 at 4:41pm, CID 855-223-2334

7. While each of the calls complained of above used the Caller ID number, they did not transmit Caller ID name information as required by law. 47 C.F.R. § 64.1601(e).

8. On or about October 25, 2011, after receiving three calls in one day, Mr. Sapan called the 855-826-3553 number given in the Caller ID and spoke to “Derrick” or “Jerrick” of Adchemy, and requested to have his phone number put on their internal do-not-call list.

1 9. Derrick or Jerrick refused to record the request in violation of TCPA
2 regulations and told Mr. Sapan to send a request to *customercare@adchemy.com*.

3 10. Frustrated, Mr. Sapan called the number again, but it was not
4 answered and went to voicemail.

5 11. On or about October 26, 2011, after receiving another two calls, Mr.
6 Sapan called the other 877-284-3871 number given in the Caller ID.

7 12. The call was not answered, however, the voicemail message was
8 identical to the voicemail message for 855-826-3553.

9 13. On the same day, Mr. Sapan again called 855-826-3553 and made a
10 second request to have his phone number added to Adchemy's do-not-call list.

11 14. The person he spoke to told Mr. Sapan to visit the website
12 *www.Search4Degrees.com*. That website is registered to Adchemy according to the
13 federal Internic Registry.

14 15. Twelve of the seventeen calls complained of were made after my first
15 request to be put on Defendants' internal do-not-call list.

16 16. Mr. Sapan's home phone has been listed on the federal "Do Not Call"
17 registry maintained by the Federal Trade Commission from August 9, 2008 to the
18 present.

19 17. Defendant Murthy V. Nukala is, and at all times herein mentioned
20 was, the owner of Defendant Adchemy, Inc.

1 18. Plaintiff alleges on information and belief that Defendant Murthy V.
2 Nukala made the violative calls, ordered them made, knew the calls described
3 above were being made and did nothing, or was willfully and recklessly ignorant
4 of the fact his company was making the calls described above.
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8 **FIRST CAUSE OF ACTION**

9 [Violation of Telephone Consumer Protection Act of 1991]

10 19. Plaintiff realleges all paragraphs above and incorporates them herein
11 by reference.

12 20. Plaintiff is bringing this action pursuant to the provisions of the
13 Telephone Consumer Protection Act of 1991 (47 U.S.C. §227 and 47 C.F.R.
14 §64.1200 – “TCPA”).
15

16 21. Subdivision (c) (2) of Section 64.1200 of Title 47 of the Code of
17 Federal Regulations makes it unlawful for any person to “initiate any telephone
18 solicitation” to “A residential telephone subscriber who has registered his or her
19 telephone number on the national do-not-call registry of persons who do not wish
20 to receive telephone solicitations”.
21

22 22. At all times relevant to this complaint, Plaintiff had registered his
23 residential telephone number on the national do-not-call registry maintained by the
24 U.S. Government.
25
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1 23. Defendants have called Plaintiff's residential telephone line for
2 solicitation purposes during the statutory period of the last 4 years, pursuant to 28
3 U.S.C. § 1658. These calls are the only calls known to Plaintiff at this time and
4 Plaintiff states on information and belief, without yet having the aid of full
5 discovery, that it is quite likely that Defendant has made many more violative calls
6 to Plaintiff's residential telephone line. These calls were not made in error, nor did
7 Defendant have express permission from Plaintiff to call, nor did Defendant have a
8 personal relationship with Plaintiff. 37 C.F.R. § 64.1200 (c) (i), (ii), & (iii).
9
10

11 24. Subdivision (c)(5) of section 227 of title 47 of the United States Code
12 permits a private right of action in state court for violations the national do-not-call
13 registry rules promulgated thereunder. Plaintiff may obtain relief in the form of
14 injunctive relief, or Plaintiff may recover \$500.00 for each violation, or both. If
15 the court finds that defendants' violations were willful or knowing, it may, in its
16 discretion, award up to three times that amount.
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22 **SECOND CAUSE OF ACTION**
23 [Trespass to Chattel]

24 25. Plaintiff realleges all paragraphs above and incorporates them herein
25 by reference.
26

27 26. The conduct by defendants complained of herein, namely illegally
28 calling Plaintiff's phone, constitutes an electronic trespass to chattel.

1 27. At no time did Plaintiff consent to this trespass.

2 28. As a proximate result of these intrusions, Plaintiff suffered damage in
3 an amount according to proof.
4

5 29. In making the illegal calls described above, defendants were guilty of
6 oppression and malice, in that defendants made said calls with the intent to vex,
7 injure, or annoy Plaintiff or with a willful and conscious disregard of Plaintiff's
8 rights. Plaintiff therefore seeks an award of punitive damages.
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12 **THIRD CAUSE OF ACTION**
13 [Engaging in Unfair Business Practices]

14 30. Plaintiff realleges all paragraphs above and incorporates them herein
15 by reference.
16

17 31. Because these telephone calls violate federal statutes, they are
18 unlawful business practices within the meaning of section 17200 of the Business
19 and Professions Code.
20

21 32. Section 17203 of the Business and Professions Code entitles Plaintiff
22 to an injunction enjoining defendants from engaging in unfair or unlawful business
23 practices.
24

25
26 WHEREFORE Plaintiff prays for judgment against defendants, and each of
27 them, as follows:
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1 On the FIRST CAUSE OF ACTION:

- 2 1. For an award of \$500.00 for each violation of 47 C.F.R. §64.1200 (c)
- 3 (2);
- 4 2. For an award of \$1,500.00 for each such violation found to have been
- 5 willful;

6 On the SECOND CAUSE OF ACTION:

- 7 3. For compensatory damages according to proof;
- 8 4. For punitive damages;

9 On the THIRD CAUSE OF ACTION:

- 10 5. For preliminary and permanent injunctions, enjoining Defendants, and
- 11 each of them, from engaging in unfair or unlawful business practices
- 12 pursuant to section 17203 of the Business and Professions Code;
- 13

14 On ALL CAUSES OF ACTION:

- 15 6. For attorney's fees pursuant to California Code of Civil Procedure §
- 16 1021.5.
- 17 7. For costs of suit herein incurred; and
- 18 8. For such further relief as the Court deems proper.
- 19

20 DATED: May 1, 2014

PRATO & REICHMAN, APC

23 /s/Christopher J. Reichman, Esq.

24 By: Christopher J. Reichman, Esq.

25 **Prato & Reichman, APC**

26 Attorneys for Plaintiff

27 JONATHAN SAPAN

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
JONATHAN SAPAN

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
PRATO & REICHMAN, APC
3737 Camino del Rio South, Suite 303,
San Diego, CA 92108

Telephone: 619-683-7971

DEFENDANTS

ADCHEMY, Inc., a California Professional Corporation, MURTHY V. NUKALA, an individual,

County of Residence of First Listed Defendant Santa Clara
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'14CV1112 JLS NLS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

47 USC 227, 5:552

Brief description of cause:

Illegal telemarketing calls to a residential phone number

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

None

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

05/01/2014

SIGNATURE OF ATTORNEY OF RECORD

/s/ Christopher J. Reichman

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE